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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,020	02/26/2002	Athanasios Nikolaou	22130	5901

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EXAMINER

LOPEZ, CARLOS N

ART UNIT PAPER NUMBER

1731

DATE MAILED: 12/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/070,020	NIKOLAOU, ATHANASIOS	
	Examiner	Art Unit	
	Carlos Lopez	1731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-24 is/are pending in the application.
- 4a) Of the above claim(s) 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention:

Species A, drawn to a method of treating tobacco products to electromagnetic energy.

Species B, drawn to a method of fabricating, packaging and treating a multiplicity of tobacco packages to electromagnetic waves.

Newly submitted claim 14 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Claim 14 is drawn to a method of treating packages of tobacco products including the means for making the packages of tobacco products is deemed as invention drawn to Species B which is distinct from the originally filed claims which were drawn to species A. The originally filed claims do not treat a plurality of tobacco packages nor do they recite a means for making the tobacco packages.

Since applicant has received an action on the merits for the originally presented invention, species A, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 14 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Specification

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). The specification lacks a plurality of terms recited in claims 15-24 that are not given proper

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antecedent basis in the specification. For example, in claim 15 the specification fails to provide proper antecedent basis for terms such as “beneficial modification of their ...”, and “specified and /or unspecified multitude of emissions of electromagnetic waves of dissimilar frequencies”.

The substitute specification filed on 9/16/03 for which the PTO received a faxed copy on 11/18/03 since the previously the mailed copy was misallocated has not been entered because it does not conform to 37 CFR 1.125(b) and (c) because: the statement as to a lack of new matter under 37 CFR 1.125(b) is missing and a marked-up copy of the substitute specification has not been supplied (in addition to the clean copy).

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 15-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The instant claims are replete with limitations not supported by the original filed specification. In claim 15 for example: disclosure of elimination of the toxic and mutagenic effects of the tobacco products, simple or composite forms of pulsations, nor limitations such as “not characterized by a continuous time operation.” In claim 18 the specification lacks support for “broadest

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macroscopic system of products of the tobacco." In claim 23, the specification lacks support for "without causing an increase in the temperature of the products of the tobacco".

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The instant claims are replete with vague and indefinite terms for example in claim 18 "broadest macroscopic system", "more broader parts of the electromagnetic spectrum", "the broad part of the electromagnetic spectrum from 30Hz to 50GHz", is noted that said limitation refers to the whole electromagnetic spectrum which can one can't ascertain "the broad part".

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the

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claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim s 17-19 respectively recite the broad recitations regarding time interruption, and frequencies followed by narrower statements regarding the time interruption and frequencies of the range/limitation.

Again as previously stated, the claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 15-22 are rejected under 35 U.S.C. 102(e) as being anticipate by Williams (US 6,135,121). Williams discloses a method for reducing the content and prevention of carcinogenic nitrosamines in tobacco plants (Abstract). The disclosed method subjects the plant to microwave radiation at appropriate times of the curing cycle (abstract). The claimed limitation of “that, electromagnetic energy is dispatched to the space occupied by the mass of the products of the tobacco, and comes from a

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synthetic electromagnetic emission that occupies broader regions of frequencies of the electromagnetic spectrum” is met by Williams in Col. 3 ln. 41-42, which teaches of providing microwave radiation with a frequency range of 900 to about 2500Mz. The microwave emissions occur for a period of 1s and preferably from about 10s to 5m (Col. 3, Ins. 43-44), which reads on the claimed “specified...dissimilar frequency”. Since the microwave emissions are only applied for periods of 1s and/or from about 10s to 5m it is thus chronically interrupted and its output power is maximum when the microwaves emission occurs and zero when there is no emissions.

As for claim 16, the emissions would operate with a symmetrical duration since its duration is predetermined.

As for claim 18, power of the emissions may range from 600 to about 1000 watts (Col. 3, Ins. 47). Additionally since the emissions have the claimed frequency range it is inherent that it will coincide with the natural frequency of each atomic or molecular system.

As for claim 19, the claimed range bounds William’s frequency range of 900 to about 2500Mz.

As for claim 20-21, the emission may be provided by more than one device such as a multimode cavity (microwave ovens) (Col. 14, Ins. 32-34).

As for claim 22, the microwave emissions may be garnered using a commercial microwave with a modular device (Col. 14, Ins. 16-24).

Response to Arguments

Applicant's arguments filed 9/16/03 have been fully considered but they are not persuasive. Applicant argues that "Williams does disclose the treatment of tobacco with microwaves, Williams does heat the tobacco product and, in fact the heating is key to the operation in Williams. Equivalent heating is excluded by claim 14. Furthermore, the invention makes clear that the treatment is effected of the packaged tobacco products using a multiplicity of such packages at a time." Is noted that said argument is drawn to a non-elected claim and moreover, support that no heating occurs of the tobacco products is not found in the originally filed application. The originally file application only supports for "no significant increase of temperature" see original claim 10, therefor some temperature increase would occur, which in the instant case Williamson is considered as not providing a significant temperature increase.

In regards to magnetron tubes, the USPTO has no tubes in it is current application file. Additionally, the discussed files A-C, which are not currently in the USPTO's files, will not be considered since they fail to be submitted as an affidavit or declaration under 37 CFR 1.132, see MPEP 716.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (for example in remarks section page 13 "This, it involves the equilibration and identification of all the atomic and/or molecular and/or more macroscopic systems of elements of tobacco products, so that the attributes of elements that tend to behave as free radicals is suspended." in page 14 "The device consists of four units, the first of which consists of a function generator with adjustable duty cycle; for example, an adjustment at its output, will give us symmetrical square pulses at a frequency of 200 KHz. The signal received from the output of the first unit, is directed to the second unit, which consists of an electronic circuit, that operates as a power supply switch, i.e. from its output we will take the power supply for the third unit.") are not recited in the rejected

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claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lopez whose telephone number is (703) 605-1174 and after Dec. 18 2003 calls should be directed to (571) 272-1193. The examiner can normally be reached on Mon.-Fri. 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on (703) 308-1164 and after Dec. 18 2003 calls should be directed to (571) 272-1189. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

CL


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